

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**

IN THE MATTER OF:

Simon Ware

Linda Ware

Debtor

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No. B-0780699 C-13D

**ORDER GRANTING STANDING TRUSTEE'S MOTION  
TO MODIFY THE DEBTORS' PLAN, AS AMENDED IN OPEN COURT**

On February 26, 2009, a hearing was held on Motion by the Standing Trustee pursuant to 11 U.S.C. §1329 to modify the Debtors' plan. The Debtors are the owners of a 2003 Toyota Sienna ("the automobile") which is subject to a lien in favor of Carmax Business Services, d/b/a Carmax Auto Finance ("Carmax") which has been involved in a collision and declared a total loss. The Trustee's Motion provided that the secured claim of Carmax would be paid by insurance proceeds and if there were excess proceeds, such proceeds would be remitted to the Trustee's Office for application upon the Debtors' plan. Carmax objected to the Trustee's Motion. At the hearing, Edward C. Boltz, Esq. appeared on behalf of the Debtors, and Richard M. Hutson, II, Standing Trustee appeared and stated to the Court he had been informed by counsel that all matters in controversy had been settled. The Court, after considering the Motion and Objection and having heard and considered the statements of the Trustee, finds that the Trustee's Motion as amended in open Court should be granted; therefore, by and with the consent of the parties, it is ORDERED:

1. The Trustee's Motion as amended in open Court pursuant to 11 U.S.C. §1329 is granted.
2. Any excess insurance proceeds available after the payment of Carmax's secured claim shall be remitted to the Trustee and such proceeds shall be held in escrow until such time that the amounts paid by the Debtors together with the escrowed funds are sufficient for the Debtors to successfully complete their Chapter 13 plan.
3. In the event the Debtors' fail to successfully complete their plan, any excess funds held in escrow by the Trustee shall be turned over to Carmax.

**PARTIES IN INTEREST**

**Page 1 of 1  
07-80699 C-13D**

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